



POLICE DEPARTMENT

November 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Daniel Young
Tax Registry No. 932084
63 Detective Squad
Disciplinary Case No. 2013-10687

The above-named member of the Department appeared before me on May 15 and July 30, 2015, charged with the following:

1. Said DETECTIVE DANIEL YOUNG, on or about October 12, 2012, at approximately 2340 hours, while assigned to the 63rd Precinct Detective Squad and on duty in the vicinity of the intersection of Flatbush Avenue and Avenue U, Kings County, did wrongfully use force against JASON HOLDER, in that he pushed JASON HOLDER against the side of a van and twisted his arms up behind his back, without police necessity.

P.G. 203-11 – USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq. Respondent was represented by Michael Lacondi, Esq.

Respondent pleaded not guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

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SUMMARY OF THE EVIDENCE PRESENTED

On October 12, 2012, at about 2340 hours, Respondent was on-duty, assigned to the 61 Precinct Detective Squad (PDS), in plainclothes, in an unmarked Department vehicle, partnered with Detective Kenneth Spaeth. Respondent and Spaeth received a radio transmission that a robbery had just occurred at East 51 Street and Avenue O, Brooklyn, and that the victim had described one of the perpetrators as a black male wearing a green Army jacket. [Respondent's Exhibit A is the Sprint Report regarding the radio transmission]

Jason Holder testified that on October 12, 2012, at about 2340 hours, he was coming home from his job as a stock associate in a clothing store. He was seated in the rear seat of a 12-passenger dollar van. He was wearing a black hat, a gray hoody, and an Army-type fatigue jacket. He was on the phone with his girlfriend when Respondent and Spaeth pulled their car up beside the van and ordered the driver to open the door. The detectives asked Holder to step out of the van.

As he started to get out, Respondent grabbed his collar, pulled him out of the van by his collar, and he was "slammed up against dirty glass." His body was pushed onto the van and both of his arms were held behind his back. Respondent then pulled Holder's left arm up between his shoulder blades to his neck area. Holder's left arm was held in this position for ten to 15 minutes. Holder recalled that "five squad cars pulled up" and he was handcuffed. He was subsequently released from custody.

Because he was experiencing pain in his left shoulder, he went to Downstate Medical Center (the hospital) where X-rays were taken and he left the hospital with his

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left arm in a sling and a prescription for Ibuprofen. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Holder has not filed a lawsuit regarding this incident. He has never been arrested before and he has never previously been involved in "an incident like this." He called CCRB for the first time two days after this incident to report what had happened to him. As part of his job he handled shipments of boxes. However, he did not lift any boxes on the day of this incident and stated his shoulder felt fine prior to the incident.

CCRB offered the hearsay statements of two people who claimed that they had witnessed this incident. Person A told CCRB¹ that she worked with Holder and that she left the store with him at the end of the workday. She walked to the bus stop, and Holder walked across the street to catch a van. A few minutes later, from her seat on her bus, she saw a handcuffed Holder standing outside a van with several police vehicles around him. Person A got off the bus and walked over to the van. Person A asked what was going on and one of the onlookers informed her that Holder was under investigation for robbing someone. Person A stated that it was not possible that Holder had committed a robbery because he had been at work all day. Person A saw one of the officers push Holder when Holder attempted to turn around.

Person B told CCRB² that he was in the same van as Holder when the police banged on the door with a gun. The police ordered Holder outside. One of the officers grabbed Holder, pinned him against the van, and held him there with one of his hands

¹ During a recorded telephone interview conducted on February 7, 2013 (CCRBX 2).

² During a recorded telephone interview conducted on October 25, 2012 (CCRBX 3).

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behind his back. Holder's arm was twisted with the wrist going upward. When Holder asked what was going on, the officer informed him that he fit the description of a robbery suspect. Holder complained that the officer was holding his hand too tight, and it looked to Person B like the officer was about to break it. Holder was released after the robbery victim drove by in a car and determined that he was not the perpetrator.

Detective Spaeth testified that it was not unusual for a perpetrator who has committed a crime to attempt to flee the scene in a dollar van. He recalled that when he spotted Holder, who was wearing a camouflage jacket, he was leaning down in the back of the van. It seemed to Spaeth like he was hiding. Spaeth asked him to exit the van and Holder complied. Spaeth frisked Holder's waist area. Holder was agitated. Holder was never handcuffed. Spaeth did not see Respondent place his hands on Holder. Spaeth testified that he did not see anything that could have caused Holder to suffer a sprained shoulder.

Police Officer Sean Kelleher was performing patrol duties assigned to the 63 Precinct at the time of this incident. When he arrived at the van, Holder was standing with Respondent and Spaeth outside the van. Holder was agitated and said he wanted to leave. Kelleher did not see any force being used against Holder. Kelleher confirmed that Holder was compliant, he waited there with them, and he complied with their directions that he stay. Kelleher prepared the UF-250 Stop & Frisk Report regarding Holder even though when he arrived Holder was already outside the van.

Respondent testified that as he and Spaeth were canvassing the area where the robbery occurred, they looked into the windows of a dollar van that was idling on the street. He ordered all the passengers out of the van and they all exited immediately

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except Holder. Holder needed to be ordered a second time and when he exited the van Respondent noticed that he fit the description of the perpetrator that had been transmitted in that he was a male black, in his early 20s, wearing a camouflage jacket. Respondent told Holder that he had to wait there for a show-up to be conducted. Holder was agitated and made it clear that he did not want to be there. He accused the officers of stopping him just because he was black. Two minutes later, the robbery victim arrived at the scene in a patrol car and a show-up was conducted. Because Holder was not identified by the robbery victim, he was immediately released.

Respondent testified that although he patted down Holder, he never used any force against him. He denied that he had pushed Holder up against the van; or placed Holder's hands behind his back; or twisted his arm; or placed him in handcuffs. He testified that Holder was screaming and causing a scene. At his CCRB interview, however, he described Holder as "getting loud, but nothing too loud."

FINDINGS AND ANALYSIS

It is charged that Respondent wrongfully used force against Holder without police necessity by pushing Holder against the side of a van and by twisting Holder's arm up behind his back.

With regard to Respondent's and Spaeth's seizure of Holder, Patrol Guide Procedure No. 208-24 "Identification Lineups/Showups," states that, "Criminal suspects may be...held for" a showup "viewing by a witness" if the "(s)eizure of a suspect is effected within a reasonable time after the commission of the crime...and "(s)eizure of a suspect is effected within an area reasonably near the crime scene." Since Holder's

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appearance and the jacket he was wearing met the general description of one of the robbers that was provided by the robbery victim and communicated to Respondent and Spaeth in a radio transmission (RX A), and since Holder was observed by Respondent and Spaeth sitting in the rear of a dollar van near the location where the perpetrators had been reported fleeing from only minutes before, Respondent and Spaeth had the right to escort Holder off the van and briefly detain him at that location until the victim of the robbery arrived and a showup identification proceeding was conducted.³

Since Respondent and Spaeth did not have probable cause to arrest Holder, they had no right to use any physical force against Holder unless he attempted to leave. However, Respondent, Spaeth and Kelleher all testified that although Holder was agitated about being detained, he was compliant, he waited with them, he complied with their directions that he stay there, and he did not try to get away.

Holder testified that Respondent grabbed his collar, pulled him out of the van, "slammed" him up against the van, held both of his arms behind his back, and his left arm up between his shoulder blades all the way to his neck area. Holder's claim regarding his left arm is supported by the medical records from the hospital [REDACTED] (CCRBX 1).

The believability of Holder's testimony is enhanced by the fact that it was devoid of suspect embellishment. For example, Holder did not claim that Respondent had pulled both of his arms up between his shoulder blades to his neck area. Rather, Holder testified that Respondent had only done this to his left arm, which is consistent with his medical records.

³ See Legal Bureau Bulletin "Eyewitness Identifications-On the Scene Showups," Vol. 23, No. 6 (Oct. 1993).

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Finally, Holder's believability is also supported by the fact that he displayed no anti-police bias during his testimony; that he has no pecuniary interest in making false allegations against Respondent because he has not filed a lawsuit regarding this incident; that he has never been arrested before; and that he had never before made a complaint to CCRB because he has never previously been involved in "an incident like this."

Respondent testified that although he patted down Holder, he never pushed Holder up against the van, or placed Holder's hands behind his back, or held or twisted his arm. This testimony, however, must be examined in light of an inconsistency between his trial testimony and his statement to CCRB. At this trial, Respondent testified that Holder was screaming and causing a scene. However, at his CCRB interview he stated that Holder had been loud, "but nothing too loud."

Respondent's testimony must also be examined in light of the inconsistencies between his trial testimony and the trial testimony of Spaeth. Although Respondent asserted that all of the passengers were ordered out of the dollar van and that they all exited immediately except Holder, Spaeth corroborated Holder's testimony that he was the only passenger who was told to get out of the van. Also, although Respondent testified that he had patted down Holder, Spaeth testified that he was the one who had patted down Holder, and Kelleher testified that he had patted down Holder.

There was another significant inconsistency between the trial testimonies of Respondent's witnesses Spaeth and Kelleher. Although Spaeth testified that he and Respondent were the only officers present when Holder exited the van and until after the showup was conducted, Kelleher testified that he arrived at the van at the same time as

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Respondent and Spaeth and that since he had prepared the UF-250 Stop & Frisk Report regarding Holder, he had conducted the stop of Holder.

In conclusion, I find that by virtue of Holder's testimony, the Administrative Prosecutor met her burden of presenting credible evidence which proves by a preponderance of the evidence that Respondent pushed Holder against the side of a van and twisted his left arm up behind his back without police necessity to do so.

Finally, in making this finding I have not relied on the hearsay statements of Person A and Person B. Both of these hearsay statements consisted of taped telephone interviews, rather than in-person interviews. Thus, the CCRB interviewer could not be certain that the interviewees were not being coached by someone sitting next to them. Also, Person B asserted that the officers had banged on the door of the van with a gun and Person A acknowledged that she worked with Holder. Because they did not appear to testify at this trial, Respondent's attorney did not have the opportunity to cross-examine Person B about his assertion or Person A about her relationship with Holder.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 22, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

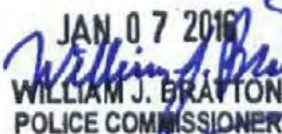
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The CCRB Administrative Prosecutor recommended that Respondent forfeit five vacation days as a penalty.

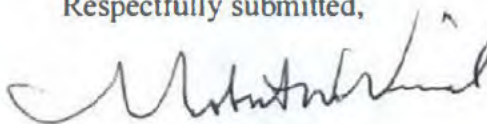
In determining a penalty recommendation I have taken into consideration the fact that Respondent is a 13-year member of the Department who has no formal disciplinary record; who has received consistently good performance evaluations; and who has an impressive Department Recognition Summary.

Therefore, it is recommended that Respondent forfeit three vacation days as a penalty.

APPROVED

JAN 07 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

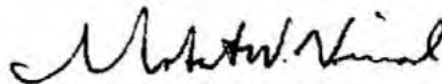
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE DANIEL YOUNG
TAX REGISTRY NO. 932084
DISCIPLINARY CASE NO. 2013-10687

Respondent received an overall rating of 4.0 on his 2014-2015 annual performance evaluation, 4.0 on his 2013-2014 annual evaluation, and 4.5 on his 2012-2013 evaluation. He has been awarded 12 Meritorious Police Duty medals and eight Excellent Police Duty medals.

[REDACTED] He has no prior formal disciplinary record. On June 9, 2005, he was placed on Level 1 Force Monitoring and upgraded to Level 2 in 2006. This monitoring ended on August 31, 2007.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials